

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2534 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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CHAKUBHAI MOHANBHAI VAGHARI (SOLANKI)

Versus

STATE OF GUJARAT

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Appearance:

MR YATIN SONI for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 12th March, 1999 made by the Commissioner of Police, Rajkot City, under the powers conferred upon him under Sub-section 1 of Section 3 of

the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. It is alleged in the grounds of detention that petitioner and his family members i.e., his wife, daughters and sons are habitual offenders and are involved in offences of theft, causing hurt, molesting the women and violation of prohibition law, etc. That one of the sons of the petitioner also was earlier detained under the Act. Three offences punishable under Chapter XVII of the Indian Penal Code have been registered against the petitioner and two statements of witnesses too are recorded. It is, therefore, held that the petitioner is a habitual offender and his activities are prejudicial to the maintenance of public order.

4. The only ground on which the impugned order of detention is challenged before me is that the detaining authority has recorded his subjective satisfaction on the material which was not before him or all the material which the detaining authority has relied upon have not been supplied to the petitioner. The allegation made against the petitioner and his family members are vague and are not supported by the cogent material. The subjective satisfaction recorded by the detaining authority is, therefore, vitiated and the detention of the petitioner is untenable.

5. It is indisputable that the allegations made against the petitioner and his family members in paragraph 2 of the grounds of detention are vague and are not supported by any material whatever. There is a reference to the petitioner's son having been held under the Act. The order of detention made against the said son also has not been supplied to the petitioner. Obviously, the detaining authority has either relied upon the material which are extraneous or are non-est. In absence of specific allegations, supported by the cogent material, the petitioner's right to make effective representation is seriously prejudiced. The action of the detaining authority is, therefore, contrary to the constitutional mandate contained in Article 22 (5). The subjective satisfaction of the detaining authority is, therefore, vitiated and the consequential order of preventive detention is also vitiated.

For the reasons recorded hereinabove, the impugned order of detention dated 12th March, 1999; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released

forthwith.

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Prakash\*